

§ 3288.35 Mediation.

(a) *Mediator.* The dispute resolution provider will provide for the selection of a mediator. The selected mediator will not be the person who screened the dispute resolution request. The selected mediator will mediate the dispute and attempt to facilitate a settlement. If a party identifies any other party that should be included in the mediation, the mediator will contact the other party and provide information about the scheduled mediation meetings.

(b) *Time*—(1) *For reaching settlement.* Except as provided in paragraph (b)(2) of this section, the parties are allowed 30 days from the commencement of the mediation to reach a mediated settlement. In every case, the dispute resolution provider will notify the parties and the homeowner, in writing, of the date of the commencement of the mediation.

(2) *Alleged defects presenting an unreasonable risk of injury, death, or significant loss or damage to valuable personal property.* For mediations involving alleged defects that appear to present an unreasonable risk of injury, death, or significant loss or damage to valuable personal property as determined by the screening neutral, the parties have a maximum 10 days from the commencement of the mediation to reach a settlement.

(3) *For corrective repairs.* Unless a longer period is agreed to in writing by the parties to the mediated settlement and the homeowner, corrective repairs must be completed no later than 30 days after the date the settlement agreement is signed by the applicable parties.

(c) *Denial of dispute.* During mediation, denial of a dispute by all parties without acceptance of responsibility will result in the mediator referring the matter to arbitration for determination of the defect and responsibility for the defect.

(d) *Written settlement agreement.*

(1) Upon reaching an agreement, the parties will sign a written settlement agreement. The dispute resolution provider will forward copies of the agreements with the original signatures of the parties to the parties, the homeowner, and to HUD.

(2) Sample agreements will be made available to the parties as drafting guidance by the dispute resolution provider.

(e) *Failure of mediation.* If mediation is not successful, parties or the homeowner may proceed to nonbinding arbitration, as provided in § 3288.40 of this part.

(f) *Confidentiality.* Except for the report of an alleged defect, any request for dispute resolution, and any written settlement agreement, all other documents and communications provided in confidence and used in the mediation will be confidential, in accordance with the Administrative Dispute Resolution Act of 1996 (5 U.S.C. 571 *et seq.*).

§ 3288.40 Nonbinding arbitration.

(a) *When initiated.* (1) If, following mediation under § 3288.35, the parties fail to reach a settlement, any party or the homeowner may, within 15 days of the expiration of the deadline applicable under § 3288.35(b), initiate nonbinding arbitration.

(2) In addition, arbitration may be initiated upon referral by the mediator pursuant to § 3288.35(c).

(b) *Written request*—(1) *Submission to HUD.* A written request for arbitration must be submitted to the dispute resolution provider. Information about the dispute resolution provider and how to make a request for dispute resolution will be available at <http://www.hud.gov> or by contacting HUD's Office of Manufactured Housing Programs at (202) 708-6423 or (800) 927-2891.

(2) *Contents of request.* The written request for arbitration must include:

(i) The name and address of the party making the request;

(ii) A brief description of the alleged defect or a copy of the report of the alleged defect; and

(iii) A copy of the request for dispute resolution.

(c) *Appointment and authority of arbitrator.* Upon receipt of the request, the dispute resolution provider will select an arbitrator. The arbitrator will have the authority to:

(1) Set hearing dates and deadlines;

(2) Conduct on-site inspections;

(3) Issue requests for documentation and information necessary to complete the record;

(4) Dismiss frivolous allegations;
 (5) Make proposed findings, including findings of defect and culpability and a disposition recommendation to HUD; and

(6) Recommend apportionment of the responsibility of paying for or providing any correction or repair of the home when recommending that culpability be assessed to more than one party.

(d) *Denial of dispute.* If the parties deny a dispute exists and the arbitrator determines there is a defect, the arbitrator will make a determination of responsibility for the defect.

(e) *Notice to parties.* The dispute resolution provider will provide the parties and the homeowner with a notice setting forth the date, place, and time an arbitration is to be held.

(f) *Proceedings.* (1) If all parties do not request an in-person hearing under paragraph (f)(2) of this section within 5 days of the dispute resolution provider's receipt of the request for arbitration, or if the arbitrator rejects the request for an in-person hearing, the arbitrator may conduct either a record review or a telephonic hearing.

(2) If any party wants to request an in-person hearing, in which the parties or their representatives may personally appear before the arbitrator, the arbitrator will consider such a request if it is made by all of the parties that are participating in the arbitration. Such an in-person hearing will be held at the discretion of the arbitrator, after considering appropriate factors, such as cost.

(g) *Effect on nonparticipating parties.* If a party chooses not to participate in the arbitration, the process will continue without further input from that party. In such a case, the arbitrator may rely on the record developed through the arbitration to find a nonparticipating party responsible for correction or repair of a defect.

(h) *Completion of arbitration.* (1) Unless an extension is granted for good cause by HUD, the arbitrator, within 21 days of the dispute resolution provider's receipt of the request for arbitration, the arbitrator will complete the arbitration process and provide HUD with all background information used during the arbitration and with a

written, nonbinding recommendation as to which party or parties are responsible for the defect, and what corrective actions should be taken.

(2) Unless an extension is granted for good cause by HUD, the arbitrator, within 21 days of the dispute resolution provider's receipt of the request for arbitration, will provide the parties with a copy of the nonbinding recommendation that was delivered to HUD, in accordance with § 3288.40(h)(1).

(i) *Settlement offers.* At any time before HUD issues a final order, the parties may submit to HUD a proposal to resolve the dispute.

§ 3288.45 HUD review and order.

(a) *Appropriate order.* HUD will review the arbitrator's recommendation provided in accordance with § 3288.40(h), any settlement offers presented by the parties in accordance with § 3288.40(i), and the information gathered during the arbitration, and will issue an appropriate order in which HUD may accept, modify, or reject the recommendations. HUD will forward a copy of the order to the arbitrator and to each of the parties and the homeowner, whether or not a party chose to participate in the arbitration.

(b) *Contents of order.* If HUD finds that a defect exists, the order will include the following:

(1) Assignment of responsibility for the correction and repair of all defects and associated costs; and

(2) If the manufacturer, retailer, or installer is responsible for corrective action, a date by which the correction and repair of each defect must be completed, taking into consideration the seriousness of the defect.

(c) *Failure to comply.* Failure to comply with an order issued by HUD is a violation of section 610(a)(5) of the Act (42 U.S.C. 5409(a)(5)).

Subpart C—Alternative Process in HUD-Administered States

§ 3288.100 Scope and applicability.

The requirements of this subpart C may be followed in lieu of the requirements of subpart B of this part to resolve disputes among manufacturers,